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Counsel for Michael Lacey and James Larkin

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

United States of America,

Plaintiff,

v.

Michael Lacey, *et al.*,

Defendants.

No. CR-18-422-PHX-SMB

**MOTION TO EXTEND DEADLINE
AND PAGE-LIMIT FOR REPLY
TO RESPONSE TO DEFENDANTS'
MOTION TO DISMISS INDICTMENT**

(Second Request for Extension of Time)

1 Defendants Michael Lacey, James Larkin, John Brunst, and Scott Spear, by and
2 through their undersigned attorneys, respectfully move the Court to extend the deadline
3 for replying to the Government's Response to Motion to Dismiss Indictment for two-
4 weeks, until July 17, 2019, and to expand the page-limit to allow a reply of no more than
5 30 pages.

6 On May 3, 2019, Defendants Michael Lacey, James Larkin, John Brunst, and
7 Scott Spear filed a Motion to Dismiss Indictment (Doc. 561). The Government moved
8 to extend the time to respond to the Motion to Dismiss until June 12, 2019, which was
9 granted. (Doc. 618). The reason for the government's request was the anticipated filing
10 of amicus briefs supporting Defendants. In its unopposed request, the government
11 indicated it would not oppose a corresponding extension for Defendants' reply. (Doc.
12 612). At the time Defendants suggested their intention to seek a two-week extension,
13 *amici* supporting the government had not yet made their presence known or contacted
14 Defendants seeking consent to file.

15 The Court granted the Government's extension motion on May 28, 2019 (Doc.
16 618), and the Government filed its response on June 12, 2019. On June 19, 2019,
17 Defendants Lacey, Larkin, Brunst, and Spear filed an unopposed motion for a two-week
18 extension of time to file their reply to the Government's response. (Doc. 642). By the
19 time of this filing, potential *amici* supporting the government had sought consent from
20 the parties but it was unknown when a brief would be filed, and Defendants' motion
21 accordingly noted that once *amici* filed, further adjustment of the reply deadline, and
22 possibly of the page limit, might become necessary. When Defendants filed that motion
23 (Doc. 642), however, they had not yet seen the sixteen-page *amicus* brief supporting the
24 Government submitted by Legal Momentum, Equality Now, National Coalition Against
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Domestic Violence, Sanctuary for Families, and United Abolitionist Incorporated.
(Doc. 641).¹

Defendants hereby request a further extension of time, and expansion of the page limit, so that their reply to response to motion to dismiss can address the matters raised in the *Amicus Curiae* Brief. While an extension of one week might be in order in the ordinary course, a July 10, 2019 deadline is not feasible with the intervening July Fourth holiday and the July 9, 2019 argument date in the Ninth Circuit in *Any and All Funds Held in Republic Bank Accounts*, No. 18-56544, relating to the Government’s civil seizures of Defendants’ assets in connection with this criminal action. Accordingly, an additional week is requested, so that Defendants’ reply to the response to Motion to Dismiss Indictment will be due on July 17, 2019. Defendants also ask that the Court extend the page limit to allow Defendants no more than 30 pages for their reply. Counsel for Defendants Lacey, Larkin, Brunst, and Spear conferred with counsel for the Government and are informed that the Government does not consent to this request (*see* Doc. 645).

The Government explains its opposition to this request in its motion for an extension of time to file an opposition to the motion to compel. (Doc. 645). It expressed “confusion” as to “why less than 24 hours after filing a request for a two-week extension, Defendants need another two weeks for their reply, especially when Defendants have long known about the Ninth Circuit argument, and Defendants had received the amici brief before filing their first extension request.” *Id.* at 2. There is no reason for the Government to be confused.

As the Government is aware, Defendants arranged for prior consent for a reciprocal two-week extension before *amici* appeared, and the Motion acknowledged the potential need for further adjustment. Although the *amicus* brief was filed the same

¹ Counsel for amicus represented that its brief would be on behalf of just two organizations, Legal Momentum and Equality Now. Contrary to that representation, upon reviewing the brief, Defendants learned it was filed on behalf of five organizations.

1 day as Motion for extension of time, Defendants had not yet seen it. As noted above,
2 Defendants normally would have requested a one-week extension to facilitate a response
3 to the additional brief, but are seeking two weeks because of the intervening holiday and
4 the Ninth Circuit argument. The Government correctly notes that the parties have been
5 aware of the Ninth Circuit argument for some time, but Defendants did not anticipate
6 how accommodating the Government's successive extension requests would lead to the
7 scheduling difficulty. The request to extend the page limit is self-explanatory—to
8 enable Defendants to respond to an additional brief that was not contemplated when the
9 original limit was established. Given the multiple proceedings and the complexity of
10 the issues involved, providing some additional time and extra pages will not prejudice
11 the Government and will facilitate sound deliberation.

12 Therefore, Defendants request that the Court extend the time for their reply to the
13 response to the Motion to Dismiss indictment until July 17, 2019, and to allow them no
14 more than 30 pages for the reply.

15 DATED this 22nd day of June, 2019.

16 DAVIS WRIGHT TREMAINE LLP

17 s/ James C. Grant

18 s/ Robert L. Corn-Revere

19 Attorneys for Michael Lacey and James Larkin
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1 Pursuant to the District's Electronic Case Filing Administrative Policies and
2 Procedures Manual (May 2018) § II(C)(3), James C. Grant hereby attests that all other
3 signatories listed, and on whose behalf this filing is submitted, concur in the filing's
content and have authorized its filing.

4 s/ Paul J. Cambria, Jr.

LIPSITZ GREEN SCIME CAMBRIA LLP
Attorneys for Michael Lacey

6 s/ Thomas H. Bienert, Jr.

7 BIENERT | KATZMAN PC
8 Attorneys for James Larkin

9 s/ Ariel A. Neuman

10 BIRD MARELLA BOXER WOLPERT NESSIM
11 DROOKS LINCENBERG AND RHOW
Attorneys for John Brunst

12 s/ Bruce Feder

13 FEDER LAW OFFICE PA
14 Attorney for Scott Spear

CERTIFICATE OF SERVICE

I hereby certify that on June 22, 2019, a true and correct copy of the foregoing document was electronically filed with the Clerk of the United States District Court of the District of Arizona by using the CM/Doc. system, and that service will be accomplished by the CM/Doc. system to all counsel of record.

s/ James C. Grant
Attorney for Michael Lacey and James Larkin

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7 **IN THE UNITED STATES DISTRICT COURT**
8 **FOR THE DISTRICT OF ARIZONA**
9

10 United States of America,

11 Plaintiff,

12 v.

13 Michael Lacey, *et al.*,

14 Defendants.

No. CR-18-422-PHX-SMB

**ORDER GRANTING MOTION TO
EXTEND DEADLINE AND PAGE-
LIMIT FOR REPLY TO RESPONSE TO
DEFENDANTS' MOTION TO
DISMISS INDICTMENT**

(Second Request for Extension of Time)

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16 Based on Defendants' Motion to Extend Deadline and Page Limit for Reply
17 to Response to Defendants' Motion to Dismiss Indictment, and good cause appearing,

18 **IT IS HEREBY ORDERED** granting the motion and extending the deadline for
19 Defendants to reply to the Government's Response to Motion to Dismiss Indictment
20 (Doc. 634) to July 17, 2019, and allowing Defendants no more than 30 pages for their
21 reply.

22 **IT IS HEREBY ORDERED** that the Motion is **GRANTED**.

23 Excludable delay under 18 U.S.C. § 3161(h) may occur as a result of this motion
24 or an order based thereon.

25 DATED this _____ day of _____, 20____.

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27 **HON. SUSAN M. BRNOVICH**
28 United States District Judge